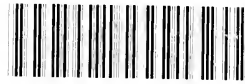


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SPEECH OF

HON. A. H. STEPHENS, OF GEORGIA,

IN THE HOUSE OF REPRESENTATIVES, FRIDAY, AUGUST 9, 1850.

On the President's Message of August 6, 1850, concerning Texas and New Mexico.

The House being in Committee of the Whole on the state of the Union, and having under consideration the Civil and Diplomatic Appropriation Bill for the fiscal year ending 30th of June, 1851, (Mr. BERT, of South Carolina, being in the chair)--

Mr. STEPHENS, of Georgia, addressed the committee as follows:

Mr. CHAIRMAN: The most interesting of the many interesting subjects which are now pressing themselves upon the consideration of this House and the country, in my opinion, is the message communicated a few days ago by the President to Congress upon the subject of the Texas boundary, and the difficulties and embarrassments attending that question. That message is now upon your table. It deserves our immediate consideration, and demands wise, prudent, and speedy action. I propose, therefore, in what I have to say upon this occasion, to confine myself to the general topics embraced in it; and it is a matter of regret to me, in the midst of so many disquieting and irritating causes which now distract and stir up the public mind, to see that we are likely to have new elements of strife and contention, to excite and inflame those strong sectional feelings which for sometime past have so unhappily existed among us. These elements are to be found in the message alluded to. The principles assumed by the President in that paper are, in my judgment, in several particulars, unsupported by the Constitution and laws of the United States, and dangerous in their tendencies not only to the rights of the States but to the liberties of the people. They strike at the very foundation upon which the whole structure of our system of representative republican government was reared, and upon which alone it can permanently stand. This, I know, is strong language, but no stronger than the truth requires to be spoken. There is no principle more essential to the preservation of our Government than that the military in time of peace shall be subject to the civil power. The message is in opposition to this principle. The President informs us that "by the Constitution of the United States, the President is constituted commander-in-chief of the army and navy; and of the militia of the several States, when called into the actual service of the United States. The Constitution declares also that he shall take care that the laws be faithfully executed, and that he shall, from time to time, give to the Congress information of the state of the Union."

This, sir, is true. By the Constitution the President is the commander-in-chief of the army and navy of the United States, and the militia of the several States when called into the actual service of the United States, and it is his duty to see that the laws are faithfully executed. This is all true. But there is something else equally true, and that is, that in seeing that the laws are faithfully executed, he must himself act in subordination to law,

and in conformity with the provisions of the laws which point out the mode of their execution. And he can use the military to execute no law which contains no provisions for its execution first by the courts.

The President further asserts that "the Constitution of the United States declares that 'this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.'" And then he refers to the late treaty with Mexico, and amongst other clauses he refers particularly to the clause which guaranties to Mexicans who may remain in the ceded territory protection in the free enjoyment of their liberty and property, and security in the free exercise of their religion, without restriction. In this way he assumes that the treaty of Guadalupe Hidalgo is such a law as he is bound to see "faithfully executed" in all its obligations. He further informs us that the State of Texas is about to extend her civil jurisdiction over a portion of country lying this side the Rio Grande within the limits of the boundary of Texas as originally claimed and asserted by her, but which, in his opinion, belongs to the General Government, and not to Texas, by virtue of the cession made by the late treaty. And without suggesting the slightest cause to apprehend that any of these rights of "liberty, property, and religion," guarantied to Mexicans under the treaty, would be interfered with by the extension of the civil jurisdiction of Texas over those of them residing east of the Rio Grande, even if they were included in the terms of the treaty, he tells us that he feels bound to resist such extension of her jurisdiction by Texas, and if necessary, to repel it with the military force of the Government at his control. By information received from Texas, no one can doubt that she intends to maintain her civil authorities coextensive with the boundary claimed by her. And we have the issue fairly presented, whether the President has the rightful power, under the Constitution and laws of the United States, as those laws now exist, to use the military power at his command against the authorities of Texas. I maintain that he has not. I meet the question at the threshold. It is one of the most important that has ever arisen in this country; and its decision, if force should be resorted to, cannot fail to mark an era in its history. I deny to the President the power he claims; and I assert that, under the Constitution and laws, he has no power, in time of peace, "in seeing that the laws are faithfully executed," to resort to military force, except when their due execution by the courts, the legally constituted tribunals for the administration of justice, may be illegally obstructed or resisted. This proposition I lay down distinctly, broadly, and confidently. It is above the reach of assault,

and beyond the power of refutation. And I maintain further, that the very laws cited by the President, from which he claims the exercise of the extraordinary and unwarranted power he does, sustains the proposition. These very acts do not, in the slightest degree, confer the power which he notifies to Congress and the country that he intends to exercise under them.

Now, sir, let us see. He cites the 2d section of the act of Congress of 1795, and the act of 3d March, 1807. But perhaps it would be better to refer to the acts, as he himself cites them. Here is what he says :

"The second section of the act of the 28th of February, 1795, declares that whenever the laws of the United States shall be opposed, or their execution obstructed, in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or the power vested in the marshals, the President may call forth the militia, so far as may be necessary to suppress such combinations, and to cause the laws to be duly executed.

"By the act of March 3d, 1807, it is provided that, in all cases of obstruction to the laws, either of the United States, or any individual State or Territory, where it is lawful for the President to call forth the militia for the purpose of causing the laws to be duly executed, it shall be lawful for him to employ, for the same purposes, such part of the land or naval force of the United States as shall be judged necessary."

These are the acts of Congress upon which he relies. The first, it will be perceived, only authorizes him in *certain cases* to call out the militia; the second authorizes him, in all *similar cases*, to use the army and navy if necessary. He has, however, no authority, under either act, to use the army and navy, or to call out the militia, for the purpose of aiding in the execution of the laws, except in such cases as are provided for by the act of 1795. And what are those cases? They are such as where the laws may be opposed on their execution, or obstructed in any State, by combinations too powerful to be suppressed by the *ordinary course of judicial proceedings, or the power vested in the marshal*. This is the only class of cases where the President is authorized to use the military force of the country to aid in the execution of the laws of the United States. It is where the due course of law, through the courts and by the marshals, is opposed and obstructed, or where the combinations in resistance to law "are too powerful to be suppressed by the ordinary course of judicial proceedings, or the power vested in the marshals."

Now, sir, is there any such case, or is there likely to be any such case, in the territory over which Texas is about to establish her jurisdiction? Is there any law, any act of Congress in force there which cannot be executed in the ordinary course of judicial proceeding? No one will assert that there is either any law or "judicial proceeding" authorized by law in that country, known to your statute book. You have passed no law for the country, even on the supposition that it rightfully belongs to you, and not to Texas. If the country belongs to the United States by conquest, as the President says, then its Government devolves upon Congress. But Congress, as yet, has provided no government for it. They have given the people there no law defining rights, or courts for the redress of wrongs. But the President says that the *treaty* is a law, and that he is bound to protect the rights which it secures. But, sir, I deny that the obligations of this treaty, or any treaty, weighty as they may be, which require legislation for their proper execution and fulfillment, can be discharged and performed by the President, unless he be first empowered by the necessary laws. I grant that this Government, by

the ratification of this treaty, assumed obligations towards certain Mexicans which ought in good faith to be observed. But it does not follow that the President is to assume the discharge of these obligations himself. The same treaty put us under the obligation to pay the Government of Mexico twelve millions of dollars—that was as much the law of the land as the guarantee of rights now under consideration; and yet the President, I presume, would not dare to put his hand into the Treasury, and pay what is due under that stipulation, without the authority of an act of appropriation. In our treaty with Great Britain, in 1815, establishing, to some extent, a reciprocity in trade, it was provided that goods and merchandise, and products coming from certain British possessions should be admitted into our ports upon as good terms as those we extended to the most favored nations bringing like products. This stipulation was as much the law of the land as the obligations to these Mexicans; and yet it required an *act of Congress* to carry it into effect and secure the rights under it—that is, to accommodate the commercial laws of the country to suit the stipulations of the treaty. The President could not have enforced the rights secured to British subjects under that treaty by an executive order; neither can the present President fulfil the existing obligation to pay Mexico the balance of what is due her of the twelve millions, without the concurrence of Congress. No idea could be more erroneous than to suppose, because a treaty is the law of the land, that the President can of himself assume the fulfillment of its obligations when those obligations do not rest upon him alone, but upon the Government in all its departments—legislative, judicial and executive. And that is the case now before us. The obligations of this treaty as to the rights of "liberty, property, and religion," on the part of the Mexicans, rest not upon the President alone, but upon the Government of the United States. *The law-making, the law-expounding, and the law-executing powers conjointly*. The law-making power must first speak. Laws defining rights and wrongs must be first passed. Courts must also be instituted to expound those laws, and marshals must be duly appointed to execute their mandates. And if the execution of the laws thus passed be opposed by combinations too powerful to be suppressed by the ordinary course of judicial proceeding thus established, *then, and not till then*, would the President be justified under existing laws, to resort to the military force for the protection of the rights secured by that article of the treaty. By the Constitution of the United States it is expressly provided, that cases arising under *treaties* shall be determined by the judiciary. The military, in this country, by no law in your statute book, can be called out in time of peace but in aid of the execution of laws in the channels of the courts, or in assistance of the marshal in the discharge of powers vested in them by law. If the President, therefore shall, in the contingency he apprehends, use the military forces at his command against the authorities of Texas, it will be *without authority of law*, a daring usurpation of power, and a gross violation of the Constitution of the United States.

Mr. Chairman, one of the surest safeguards of public liberty is, that in time of peace the military shall be subordinate to the civil authority. And one of the gravest charges brought against the King of England in that long list of abuses of power enumerated in our Declaration of Independ-

ence, and which lost him the American Colonies, was that of quartering troops in the Colonies without the consent of the Legislatures, and of rendering "the military independent of, and superior to, the civil power." Sir, this principle dates back anterior even to that. It constitutes the soul and spirit of Magna Charta itself. The old barons of England at Runnymede, in 1215, achieved for themselves, their nation, and mankind, no greater or more important principle than that which compelled King John to grant that in all time to come within his realm—

*"Nullus liber homo capiatur, et imprisonetur, aut dissolutus, aut uiligeretur, aut exuletur, aut aliquo modo destruetur; nec super eum ibimus, nec super eum mittimus, nisi per legale iudicium suorum, parium vel per legem terre."*

*"No freeman shall be seized, or imprisoned, or dispossessed, or outlawed, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land."*

This principle has remained unshaken in England for upwards of six hundred years. Our ancestors brought it with them to this western continent. The framers of our Constitution reproduced it, somewhat modified in form, but the same in spirit and substance, in that great charter of power by which every officer of this Government is limited and controlled. The fifth article of the Constitution of the United States provides thus—

*"No person shall be deprived of life, liberty, or property, without due process of law."*

The sixth article is in these words:

*"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence."*

Now, sir, I ask if a man can be rightfully shot down by an armed soldiery in pursuance of an Executive order, for doing what he could not be even indicted and tried for doing, much less convicted of any offence for doing, by any court or code known to the laws of the land? Can the President rightfully order the army to shoot citizens of the country in time of peace, who are guilty of no crime, or a violation of no law? Can a man in this country, by an order from the Chief Magistrate, be deprived of his life in time of peace "without due process of law?" Where there is no law there can be no transgression. You will observe, Mr. Chairman, that I am only considering this question as it now stands—I have, as yet, said nothing about what would be the condition of things if Congress should undertake to establish a government for New Mexico this side the Rio Grande. If courts should be established there, and if laws should be passed prescribing the manner of determining by judicial proceedings the rights of Mexicans residing there, under the treaty, and clothing the President with power to call to the aid of the civil authorities the military force in case the execution of such laws should be resisted, that would present a very different question from the one now before us. The President has not invoked our aid, nor asked us to pass any laws that may be necessary to execute that article of the treaty, or to enable him to do it efficiently and rightfully, nor has he even asked us to pass any law to enable him to use the military force of the country for that purpose. He has simply announced what he intends to do in certain contingencies, without authority of law.

If a proposition was before us to pass a law authorizing the President to resist the authority of Texas in extending her jurisdiction in that part of the country to which reference has been made, that would present the question whether there is any constitutional power in the General Government to coerce one of the States of the Union. That is a question I do not now wish to discuss. It is not now before us. If a bill be brought in to confer this power on the President, then I shall meet it. That was the distinct question presented in 1833 between this Government and the State of South Carolina. The position assumed by Mr. Fillmore is far outside of that assumed by General Jackson. General Jackson seems never to have dreamed of relying on the acts of 1795 and 1807, although there would have been much more reason for his doing so in that case than the present Chief Magistrate, in the case before us. For, in South Carolina there were revenue and judiciary laws in force. And in case their execution had been obstructed, there would have been much more justifiable ground for calling out the military force than there is in this case, when there is no law to obstruct, and no judiciary to appeal to, in the first instance. But General Jackson came to Congress with a message, and asked an amendment of the laws providing for the collection of the revenue, to meet the emergency created by the ordinance and laws of South Carolina. And he further asked an amendment of the acts of 1795 and 1807, so as to give him full power to call to his aid the military forces of the country in case the judiciary should prove unable to execute the amended laws by process of resistance to its process or judgments. In accordance with his views, the act (well known as the force bill) was passed, which expired by its own limitation in twelve months from its date. The constitutionality of that act was very much questioned by many at that time. But that is not the matter I am now discussing. It is not even whether General Jackson, without that act, could have exercised all the powers it conferred on him; but it is, whether the President shall make his own judgment of the rights of a treaty, without any judicial investigation, the law of the land, and use the military force to carry that private judgment of his into execution. It is simply, whether we are to be under military rule or a government of laws.

The President says that the question of Texas boundary is one that he cannot decide. In this opinion I fully concur. This is a matter he has no more power to decide than you or I. And until it is determined by agreement between this Government and Texas, or by judicial proceedings, it is beyond his province to give even an opinion one way or the other. But how he can assume to say that the Mexicans on this side the Rio Grande are not within those limits over which Texas can rightfully extend her civil jurisdiction, without at the same time undertaking to decide the question of boundary, I cannot understand. These two positions of the President, to my mind, are irreconcilable. If any man can show how he can say to Texas, "Thus far you may go and no further," without deciding the question of her boundary, I should like to hear him. That is certainly a decision, and a most emphatic decision of the question. It is a decision in the last resort to be executed by force. And, moreover, it is an Executive decision, without color of authority. Nothing else can be made of it.

As to the position that the United States troops were left in the territory at the termination of the

war, and that it is the duty of the President, as commander-in-chief, to keep them there and to hold possession of the country with them against any interference on the part of Texas, until the boundary be settled, I do not consider that it rises to that dignity which would justify an argument to answer it. If the country belongs to the United States by conquest, its Government devolves upon Congress. And if any laws be necessary to defend it, and secure it, it is the duty of the President to apply to the law-making power for authority to do so. And until Congress makes some disposition of it, or gives him authority to hold it by force, he has no right or power to do it. Until Congress speaks, he has no authority to defend by force the military possession of the United States of any portion of their late acquisitions from Mexico. How has it been in California? There we have seen this possession, which it is said he is bound to defend, entirely abandoned; and the whole country taken possession of by people coming from all countries, and speaking all languages, who have appropriated it to themselves, and who have set up a government for themselves, which we are called upon to recognize and sanction. Now, if it be the duty of the President to defend by force military possession of New Mexico this side the Rio Grande, against the authorities of Texas, until the boundary be settled, why is it not also his duty to defend in like manner the military possession of California until Congress shall make some disposition of it? The case of California is much stronger in every point of view than that of New Mexico this side the Rio Grande. For I have shown that the President cannot interfere there without the virtual decision of the question of Texas boundary, which he admits that he has no right to decide.

I now go further; and I maintain that if Texas should be resisted by the Mexicans in this portion of the territory lying within her prescribed limits, and should apply to the President for assistance to put down that resistance while this question of boundary is unsettled, he would be bound, under the Constitution, and law of 1795, to afford the necessary assistance. I read from the first section of that act:

"And in case of an insurrection in any State against the Government thereof, it shall be lawful for the President of the United States, on application of the Legislature of such State, or of the Executive, (when the Legislature cannot be convened,) to call forth such number of the militia of any other State or States as may be applied for, as he may judge sufficient to suppress such insurrection."

These people, it is well known, reside within the limits of Texas according to the boundaries prescribed by her own laws. The law of boundary of that State the President is as much bound to respect and have enforced as any other law of Texas, or any other law of any other State, or any law of the United States, unless it be inconsistent with the Constitution of the United States, or some law or treaty of the United States. I repeat, sir, the President is as much bound to regard all constitutional laws of the respective States as he is the laws of the United States. And if called upon in pursuance of the act of 1795, just read, he is as much bound to assist a State in putting down resistance to the execution of any of her constitutional laws, as he is to see to the execution of the laws of the United States. And, as it is a question which he cannot decide, he is bound to regard the laws of Texas, whether defining her boundary or extending her jurisdiction, as valid, unless it comes in conflict with the Constitution, or some

law or treaty of the United States. Now, sir, is there anything in this law of Texas inconsistent with the late treaty with Mexico?

I do not intend now to go into a discussion of the Texas boundary. I did this a few days ago. I do not now wish to repeat what I then said. I will barely enumerate some of the points. You and this House will recollect that I do not consider the question now as it stood before the war. Texas, as an independent State, was annexed and admitted into the Union with such territorial limits as rightfully belonged to her at that time. Her rights were founded altogether upon the right of successful revolution, and their extent, in my opinion then, was to the limits over which she had established her jurisdiction. Her limits were such as she had successfully marked by the sword. I did not then believe, nor do I now believe, that she had thus established her jurisdiction to the extent of her claim. But the settlement of her boundary with Mexico was reserved for this Government. And this Government, without waiting for peaceful negotiation, proceeded by force of arms to assert her rights to the extent of her claim. The then President, Mr. Polk, maintained that her proper boundary rightfully extended to the Rio Grande, from its mouth to its source; and this position was maintained in the act declaring war, by large majorities in both branches of Congress. It did not receive my vote, for I did not believe it to be true. But it received the sanction of this Government in both the executive and legislative departments. The Government of the United States, therefore, I consider to be fully committed on this point. Unless we are disposed to disregard the public faith most solemnly plighted, we are, in my opinion, estopped by the record. It was upon the assertion of these rights of Texas to the Rio Grande from its mouth to its source, that the war was declared. It was in vindication of the rights of Texas to extend her jurisdiction under her laws and Constitution to the limits of her Territorial claim, that the army was ordered to take a position on the east bank of the Rio Grande. The war was the consequence. And now I ask, if there is anything in the treaty that was made at the end of that war inconsistent with those laws of Texas which the war was commenced to enforce? So far from it, the treaty affirms the boundary to be the Rio Grande up to the corner of New Mexico on the other side of the Rio Grande—then turning westward—leaving to Texas, without the slightest restriction, all the territory claimed by her. And, moreover, the treaty has a map accompanying it, which is made part of it, and in which the boundary of Texas is clearly and distinctly set forth, as running with the Rio Grande from its mouth to its source. So far, then, from this treaty containing anything inconsistent with the previous laws of Texas, defining and asserting her rights, it does seem to me, upon all the rules of just and fair construction, to affirm and fully establish those rights, and utterly to deprive this Government of all pretext of questioning them, except by bold, open, and infamous repudiation.

Mr. MOORE inquired whether the resolutions of annexation did not leave it to the General Government to determine the boundary of Texas?

Mr. STEPHENS. The resolutions of annexation conferred upon the General Government the power to settle this question of boundary with Mexico. They give this Government authority or power over the subject for no other object, and to no further extent. This Government had no

jurisdiction over the matter but with Mexico. She had no power to say to Texas that her limits should be restricted, but in treating with Mexico, I have shown that in the treaty with Mexico there is no clause restricting them. Of course she has no power to restrict them now. But, to present the subject to the gentleman in a clearer view, suppose that Mexico had never questioned the right of Texas to the Rio Grande, could this Government ever have done so?—Would we not have been bound to maintain her jurisdiction to the extent of her limits prescribed by her laws, and to have put down any insurrection against her laws within those limits? The only contesting party Texas had was Mexico; and when Mexico ceased the contest, Texas and the United States stood towards each other just as they would have stood if no contest had ever arisen, unless in making the treaty which terminated the contest, and where the United States only had jurisdiction, some restriction was imposed upon Texas. If such restriction had been inserted in the treaty, of course Texas would have been bound by it; for this Government had the power in that way to take jurisdiction over it, but in no other way. And as the treaty does not contain any such restriction, and as Mexico is no longer contesting, I maintain that Texas and the United States stand towards each other upon this subject now just as they would have stood if the war had never been waged, and Mexico had never disputed her claim. The gentleman, I trust, understands me, and feels fully answered.

Mr. STEVENS, of Pennsylvania, asked if it was not competent for Mexico to assign her interest in the disputed territory to the United States, and whether the United States, under the treaty, was to be the assignee of that interest?

Mr. STEPHENS, of Georgia, continued. No, sir. In the articles of union between Texas and the United States, or the resolutions of annexation, Texas gave this Government no power to become the assignee of Mexico. The only power conferred was to extinguish the outstanding claim. This Government assumed the character of an umpire. She had power to settle the dispute as a disinterested person, but not to become a party to the controversy. She had no power to purchase the outstanding claim, and to become the assignee thereof. And if she had so purchased it, her rights would have been invalid, and the purchase would have injured immediately, according to the well-settled principles of law, to Texas, her *estui qui trust*. But, sir, the treaty shows that she did not attempt to take an assignment of the interest of Mexico in the disputed territory, and to put herself in the shoes of Mexico in this matter. There are no such words, no such clause, no such intent to be found from the beginning to the end of that treaty, and no such construction can be put upon it without committing as great an outrage upon the English language as some men seem disposed to commit upon what I now consider to be the indisputable constitutional rights of Texas. These rights have, in my judgment, been thus indisputably established by the action of this Government. I do not intend now to speak of the policy which governed the public counsels at that time. It is known that I opposed it to the utmost of my ability. But what was done then cannot be undone now. We have heard a great deal for some years past of the odium of repudiation. And strange to say, the very men who have been loudest in their denunciation against particular States who failed for a time

to fulfill their public engagements, are now the loudest in their clamors for a total disregard of the pledged faith of the Union. These are the men, also, who are pleased to assume to themselves the title of *conservatives*. Sir, if I know anything of *conservatism*, it is that principle which sustains the supremacy of the law, which maintains the rights of all parties under the law, and which never abandons the public faith when once constitutionally given. This is the nature of any conservatism. And could a more shameless spectacle be presented to the civilized world than for this Government, after having gone to war with Mexico for contending that the rights of Texas did not extend to the Rio Grande, and after spending all the blood and treasure which was wasted in that war, to turn round and commence another equally bloody and much more unnatural conflict against Texas for asserting that her rightful boundary *does extend* to that limit? This is the disgrace, scandal, and infamy which some of you who call yourselves *conservatives* would bring upon your country. I belong to no such class of men. I am for abiding by the order of things as I find them constitutionally existing, until they be constitutionally changed. If they get too bad to be borne without hope of redress, then I shall be for revolution.

But having been led to say more upon this subject of the boundary of Texas than I intended, in consequence of the interruptions, I return to the point I was upon. And I again repeat, that if the President should be called upon by Texas to put down illegal resistance to her authorities within her limits, he would be bound to regard the law of Texas, defining her boundary, as the law of the land on this subject, until it be displaced or invalidated by some superior law. The treaty would have been such superior law if it had done it. But it did not. A law of Congress, with the consent of Texas, would be such a law; but none such is in existence. Whether a law of Congress alone, without the consent of Texas, would be such a law, is not now before us. It will be time enough to discuss that question when it arises. All that we now have before us, is the message announcing the opinion of the Executive that it is a question that he cannot decide; but that, until it is decided by competent authority, he will use force to prevent the extension of the jurisdiction of Texas over territory lying within her limits as prescribed by her laws, notwithstanding those laws are not inconsistent or in conflict with any superior law; and that he will do this without asking any authority from Congress in addition to that conferred upon him by the acts of 1795 and 1807. I have shown conclusively, I think, that those acts confer no such authority on him. And now, in conclusion on this branch of the subject, I assert, that if he attempts thus by force to arrest the legal authorities of Texas, it will be a gross usurpation of power which should be resisted.

And if you wish to know what I mean by resistance, or how I mean it should be resisted, I say distinctly, it should be resisted by *arms*, as lawless force always should be resisted.

I cannot speak for Texas—I have no authority to speak for her—she has men upon this floor who can speak for her. But I have mistaken the character of her people if the spirit exhibited at the Alamo and St. Jacinto would submit tamely to such wanton wrong. The rights and duty of Texas, to my mind, are clear. If the question be not settled, she should extend her jurisdiction over this territory—she should pass all laws necessary

to command obedience to her sovereignty within her limits.

And if the execution of those laws should be opposed by force, either on the part of the people residing in the disaffected section or the army of the United States, she should meet force with force, let the consequences be what they may. And no man need delude himself with the opinion, that in such a conflict Texas would be alone. I have lately expressed the opinion, that "*the first Federal gun that shall be fired against the people of Texas without the authority of law, will be a signal for the freemen from the Delaware to the Rio Grande to rally to the rescue.*" And I repeat the sentiment here this day. The clangor of battle at Concord, Lexington, and Bunker Hill, did not more magically arouse every friend of his country, from Massachusetts to Georgia, in the time of colonial wrongs, than the first roar of Federal artillery in such a cause, at Santa Fe, will start to arms, at this time, every true-hearted man south of Mason and Dixon's line. The former was the beginning of one Revolution, and it will be well for those to whom the destinies of this Republic are now committed, to take care that the latter may not be the commencement of another. The people in the slaveholding States of this Union cannot mistake this question. They understand perfectly well that nothing would ever have been heard of this doctrine, of its being the duty of the President to maintain the possession of the United States over this country against Texas, if it had not been that Texas is a slave State. We have heard nothing of it in California, or Utah, or New Mexico the other side of the Rio Grande. We have heard nothing of the obligations of the treaty securing "life, liberty, and religion," to those Mexicans who have fallen within the dominions of the Mormons, or who have become a prey to the savages that roam over the immense tracts of country between the Del Norte and the Pacific. No, sir; we have heard nothing of these obligations of the treaty, and this doctrine of holding possession by force without authority of law, saving in that comparatively small portion of the Territory lying east of the Rio Grande, which falls within the prescribed limits of Texas. "Liberty, property, and religion," stand in no need of protection amongst the mixed and motley herd who have flocked to California from all nations and climes—these sacred rights are perfectly safe amongst Mormons and savages. It is only in slaveholding Texas that they need protection. Now, sir, I say there is no mistaking the issue. And I tell you, the people of the South will meet it, and they will meet it as freemen "who know their rights, and knowing them, dare maintain them."

Mr. Chairman, it gives me no pleasure to speak in this language. I do not wish to be understood as picturing a state of things which would afford me any gratification to behold. I am but proclaiming disagreeable truths, which public duty requires me to utter. I am not insensible to the consequences which would inevitably ensue from such a collision. I am, therefore, as anxious as any man can be to avert them if possible; but they can never be averted by the policy of this message. I have for a long time looked upon this question of Texas boundary as the most embarrassing one before us, and I feel no hesitancy in saying, that I am in favor of a speedy and amicable adjustment of it. I am also for a settlement of all the other causes of irritation and agitation in the country, which now so painfully disturb and distract the public

mind, as well as the public councils. But it is important that we do not deceive ourselves on these questions. I intend, therefore, to speak plainly and distinctly to you and the country. When we talk of an amicable adjustment, we may as well understand clearly what we mean by it. The President in his message, notwithstanding this threat of force, urges upon Congress the settlement of these matters of contention and strife;—that part of the message meets my cordial approval. But how are they to be amicably settled? This brings us directly to the principles which must govern our action—to the basis upon which we are to agree. I shall give you mine candidly and frankly.

So far as the boundary of Texas is concerned, I am willing to settle that upon the plan suggested by the President, provided we can agree upon the terms of disposing of the other sectional difficulties. We hear a great deal about settlement, adjustment, compromise, harmony, and union. Now I am for all these. I am no enemy to the Union. And those of this House who know much of me, know full well that I mean exactly what I say. I repeat, I am no enemy to the Union—and I am for its preservation and its perpetuation, if it can be done upon principles of equality and justice. Attachment to the Union with me and with the South generally, I think, is a sentiment of patriotism—it grows out of the recollections of the past, the glories of the present, and the hopes of the future. It arises from no base calculation of dollars and cents. But I tell gentlemen of the North it is for them now to determine whether it shall be preserved or not. In point of money value, I think it is worth more to the North than to the South. We have heard but little from gentlemen from that section, for eight months past, but eulogies upon the Union. If they are sincere in the expression of this deep devotion to the institutions of our fathers, it is time for them to present the offering which they are willing to make upon the altar of our common country for its preservation. If they expect the South to make all the sacrifices, to yield everything, and to permit them to carry out their sectional policy under the cry of "our glorious Union;" they will find themselves most sadly mistaken. It is time for mutual concessions. This Union was formed for the protection of the lives, the liberty, and the property of those who entered into it, and those who should fill their places after them. Allegiance and protection are reciprocal; where no protection is extended, no rightful allegiance can be claimed. And no people, in my judgment, who deserve the name of freemen, will continue their allegiance to any Government which arrays itself not only against their property, but against their social and civil organization. If you, gentlemen of the North, then, intend to ingraft upon the policy of this common Government your anti-slavery views, and to make its action conform to your sectional purposes, it is useless to say anything more of compromise, settlement, adjustment, or union. It is as well for us to come to a distinct understanding upon the subject at once. I do not place a low estimate upon the value of the Union to the South; but I do not consider its dissolution, with all the manifold attending evils of such an event in full view before me, as the greatest calamity that could befall us. Far from it. There is no evil which can fall upon any people, in my opinion, equal to that of the degradation which always follows a submission to insult, injury, outrage, and aggression. And whenever



this Government is brought in hostile array against me and mine, I am for disunion—openly, boldly, and fearlessly, for *revolution*. I speak plainly. Gentlemen may call this “treason” if they please. Sir, epithets have no terrors for me. The charge of “traitor” may be whispered in the ears of the timid and craven-hearted. It is the last appeal of tyrants. It is no new word of modern coinage. It is a term long since familiar to those who know how freedom is lost and how freedom may be won. And I say here, in the presence of this House, in broad day, that I will acknowledge allegiance to no Government that puts the property of the people to which I belong out of the pale of the law, and which attempts to fix public odium and reprobation upon their social order and civil organization. When that day comes, if it ever does, “down with the Government” will be my motto and watchword. When I am *outlawed* by you, I shall become your implacable enemy. I shall never kiss the rod that smites me. And no people who do not deserve to be scoffed at, trampled upon, and kicked by their oppressors, will. I told you that we might as well talk plainly upon this subject, and I intend to do it. And it is for you now, who have nothing on your lips but “*union*,” if you are in earnest in your professions, to come forward and assist in devising the ways and means of sustaining it. I have on a former occasion given my views upon the subject of our differences, and I intend to repeat them before I close; but I have not yet heard anything from those who compose the majority in this House of a conciliatory character. If your only reliance for harmony, peace, and union is *force*, come out and say so; or if you have any plan of conciliation, submit it. I am for conciliation, if it can be accomplished upon any reasonable and just principles. I am also for making a clean business of it. I am for no partial arrangement. If we aim at peace, let us have no temporary truce, but permanent quiet and repose. This, in my opinion, can only be done by a settlement of all the questions growing out of these territorial acquisitions upon liberal and proper terms. What are such terms? This is the practical point for us now to consider.

The gentleman from Pennsylvania [Mr. Whiston] said the other day, that these agitations would never cease until the South ceased her endeavors to force the General Government to conform its policy to their sectional views and interests. This was the purport of his remarks, if I heard him correctly. In this he virtually charged that these agitations came from the South, and without just cause. And the correctness of this accusation I deny. When, let me ask that gentleman, did the South ever attempt to control the action of this Government for the promotion of her peculiar interests? When did she ever ask this Government to pass any law for the promotion of her interests? The North has repeatedly asked for tariff acts and navigation acts, upon which their interests so much depend—which have been repeatedly granted. It is true, that men from the South have often voted for such measures when presented and urged by the North—not because the South was particularly interested in them, but because the North was, and they were willing to advance the interests of the North, when, in their opinion, they could do so without injury or detriment to other sections. But when did the South ever invoke the action of this Government for its exclusive benefit? I ask for the instance to be named. I recollect but one, and that is the pas-

sage of a law more effectually to secure the rendition of fugitives from labor; which is our right expressly guaranteed under the Constitution; and this you continue to refuse us. And how is it upon this very territorial question which is now the source of the excitement, which the gentleman from Pennsylvania says will never be allayed until the South ceases her endeavors to gain an unjustifiable control over the action of the Government? How does this case stand? Who is it that is attempting to control the policy of the Government to carry out their sectional views and purposes?

A public domain has been acquired by the common blood and common treasure of all, and the South, who is charged with endeavoring to control the Government for their purposes, asks nothing but that the common territory which is the public property, may be opened to the entry and settlement and equal enjoyment of all the citizens of every part of the Republic, with their property of every description; while it is the North who comes here and demands that the whole of this common domain shall be set apart exclusively for themselves, or for themselves and such persons from the South as will strip themselves of a certain species of their property, and conform their views to the policy of the North. I submit it to every candid man in this House, and to every intelligent and candid man in the world, outside of the House, if this is not a fair statement of the question? The South asks no discrimination in her favor. It is the North that is seeking to obtain discriminations against her and her people. And who leads in this endeavor to control the action of the Government for sectional objects? It is the gentleman himself, who brings this charge against the South. Sir, I deny the charge, and repel it. And I tell that gentleman, and the House, if these agitations are not to cease until the South shall quietly and silently yield to these demands of the North, it is useless to talk of any amicable settlement of the matters in controversy. If that is the basis you propose, we need say nothing further about agreement or adjustment—upon those terms we can never settle. The people of the South have as much right to occupy, enjoy, and colonize, these Territories with their property, as the people of the North have with theirs. This is the basis upon which I stand, and the principles upon which it rests are as immutable as right and justice. They are the principles of natural law, founded in natural justice, as recognized by the ablest Publicists who have written upon the laws of nations and the rights pertaining to conquests. These acquisitions belong to the whole people of the United States, as conquerors. They hold them under the Constitution, and the General Government as common property in a corporate capacity.

Vattel, in treating on this subject in his work on the laws of nations, says, (*book 1, chap. 20, p. 113*):

“All members of a corporation have an equal right to the use of the common property. But respecting the manner of enjoying it, the body of the corporation may make such regulations as they may think proper, provided that those regulations be not inconsistent with that equality of right which ought to be preserved in a communion of property. Thus a corporation may determine the use of a common forest or a common pasture, either allotting it to all the members, according to their wants, or allotting each an equal share; or they have not a right to exclude any one of the members, or to make a distinction to his disadvantage, by assigning him a less share than that of the others.”

The principles here set forth are those upon which I place the merits and justice of our cause

Under our Constitution, the power of making regulations for the enjoyment of the common domain, devolves upon Congress, the common agent of all the parties interested in it. In the execution of this trust, it is the duty of Congress to pass all laws necessary for an equal and just participation in it. And so far from this common agent having any right to exclude a portion of the people, or "to make distinctions to their disadvantage," it is the duty of Congress to open the country by the removal of all obstructions, whether they be existing laws or anything else, and to give equal protection to all who may avail themselves of the right to use it. But you men of the North say, that we of the South wish to carry our slaves there, and that the free labor of the North cannot submit to the degradation of being associated with slave labor. Well, then, we say, as the patriarch of old said to his friend and kinsman, when disputes arose between the herdmen of their cattle: "Let there be no strife, I pray thee, between me and thee, and 'between my herdmen and thy herdmen, for we 're brethren. Is not the whole land before thee? Separate thyself, I pray thee, from me. If thou wilt take the left hand, then I will go to the right; or, if thou depart to the right hand, then I will go to the left." In other words, we say, if you cannot agree to enjoy this public domain in common, let us divide it. You take a share, and let us take a share. And I again submit to an intelligent and candid world if the proposition is not fair and just—and whether its rejection does not amount to a clear expression of your fixed determination to exclude us entirely from any participation in this public domain?

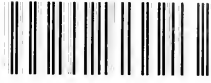
Now, sir, all that we ask, or all that I ask, is for Congress to open the entire country, and give an equal right to all the citizens of all the States to enter, settle, and colonize it with their property of every kind; or to make an equitable division of it. Is this wrong? Is it endeavoring to control the action of Congress improperly to carry out sectional views and interests? And am I to subject myself to the intended reproach of being an *ultraist* for insisting upon nothing but what is just and right? If so, I am willing to bear whatever of reproach the epithet may impart. If a man be an *ultraist* for insisting upon nothing but his rights, with a willingness to compromise even these upon any fair and reasonable terms, without a total abandonment of them, then I am an *ultraist*. And I am mistaken in the character of that people amongst whom I was born and with whom I have been reared, if a large majority of them, when all their propositions for adjustment and compromise shall have been rejected, will not be *ultraists* too. Be not deceived, and do not deceive others—this Union can never be maintained by force. With the confidence and affections of the people of all sections of the country, it is capable of being the strongest and best Government on earth. But it can never be maintained upon any other principles than those upon which it was formed. All free governments are the creatures of volition—a breath can make them and a breath can destroy them. This Government is no exception to the rule. And when once its spirit shall have departed, no power on earth can ever again infuse in it the Promethean spark of life and vitality. You might just as well attempt to raise the dead.

Mr. Chairman, when I look to the causes which lie at the bottom of these differences of opinion

between the North and the South, and out of which this agitation springs; when I look at their character, extent, and radical nature—entering, as they necessarily do, into the very organization of society with us, I must confess that unpleasant apprehensions for the future permanent peace and quiet of the different States of this Union force themselves upon my mind. I am not, however, disposed to anticipate evil by indulging those apprehensions unless compelled to do so. It may be that we have the seeds of dissolution in our system which no skill can eradicate, just as we carry with us in our bodies the seeds of death which will certainly do their work at the allotted time. But because we are all conscious that we must die, it does not follow that we should hasten the event by an act of suicide. We have the business, duties, and obligations of life to discharge. So with this Government. Because I may have serious apprehensions of the workings of causes known to exist, I do not conceive it therefore to be in the line of duty to anticipate the natural effects of those causes by any rash or unjustifiable act. I am disposed rather to hope for the best, while I feel bound to be prepared for the worst. What is really to be the future fate and destiny of this Republic is a matter of interesting speculation; but I am well satisfied that it cannot last long, even if the present differences be adjusted, unless these violent and bitter sectional feelings of the North be kept out of the National Halls. This is a conclusion that all must come to, who know anything of the lessons of history. But our business to-day is with the present, and not the future; and I would now invoke every member of this House who hears me, with the same frankness, earnestness, and singleness of purpose with which I have addressed them throughout these remarks, to come up like men and patriots, and relieve the country from the dangerous embarrassments by which it is at this time surrounded. It is a duty we owe to ourselves, to the millions we represent, and to the whole civilized world. To do this, I tell you again, there must be concessions by the North as well as the South. Are you not prepared to make them? Are your feelings too narrow and restricted to embrace the whole country and to deal justly by all its parts? Have you formed a fixed, firm, and inflexible determination to carry your measures in this House by numerical strength, and then to enforce them by the bayonet? If so, you may be prepared to meet the consequences of whatever follows. The responsibility will rest upon your own heads. You may think that the suppression of an outbreak in the southern States would be a holiday job for a few of your northern regiments, but you may find to your cost, in the end, that seven millions of people fighting for their rights, their homes, and their hearth-stones, cannot be "easily conquered." I submit the matter to your deliberate consideration.

I have told you, sincerely and honestly, that I am for peace and the Union upon any fair and reasonable terms—it is the most cherished sentiment of my heart. But if you deny these terms—if you continue "deaf to the voice" of that spirit of justice, right, and equality, which should always characterize the deliberations of statesmen, I know of no other alternative that will be left to the people of the South, but, sooner or later, "to acquiesce in the necessity" of "holding you, as the rest of mankind, enemies in war—in peace, friends."

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